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WHOLE NO. 236.

Temperance.

TEMPERANCE HOTELS.

MONTPELIER, April 25, 1836.

At a meeting of the Montpelier Temperance Association, held this evening at the Vestry of the First Church,

Rev. C. Wright, on behalf of a committee consisting of John Spalding, J. Loomis, C. Wright, S. B. Prentiss, Doct. Spalding, N. Baylies, Jr., and N. Rublee, appointed on the 18th inst., submitted the following

REPORT.

To the Montpelier Temperance Association.

Your committee, to whom was referred the subject of Temperance Taverns, beg leave to report. That in their opinion the establishment of Taverns in which no intoxicating liquors shall be sold, is of vital importance to the advancement and final triumph of the Temperance Reform; and they regret to be obliged to admit that public houses having the banner of temperance have hitherto received but a very limited patronage. Various reasons may be assigned for this. One is the fact that a large portion of the travelling is performed in public stages, nearly all of which are connected with rum-selling establishments. Another reason is the reluctance which even temperance men feel towards leaving houses where they have been accustomed to call and where they have been agreeably entertained, and resorting to new establishments, where they are unacquainted. A third reason is the superiority of many of the old establishments where spirits are sold, in style, accommodations and attendance, to most of the temperance taverns which have been opened. Public houses excluding ardent spirit have been opened, probably as an experiment; and the uncertainty of their being sustained has deterred their owners or occupants from incurring the expense necessary to render them so attractive to the traveler as would be desirable. A fourth reason why temperance taverns have not been better sustained, is found in the low standard of temperance which many of them have adopted. While excluding ardent spirits from their bars, they have furnished them with a good store of wine, strong beer, cider, &c. The lovers of strong drink have found in these a substitute for distilled liquors, and hence some of these establishments have become the favorite haunts of tipplers and drunkards.

The prevalence of the doctrine of entire abstinence from all intoxicating drink, will correct this evil.

One other reason your committee are sorry to assign, but must not omit. Temperance men seem not to be aware of the obligation imposed on them by their principles and by the pledge they have given to extend as far as practicable their patronage to temperance establishments, and especially to temperance taverns. They have unhesitatingly pledged themselves in all suitable ways to endeavor to promote the temperance reform. Next to fidelity to their pledge of abstinence in their own persons, may be justly regarded the encouragement of temperance taverns. Public houses are now the principal strong holds of intemperance. Let strong drink be banished from these important establishments, and the grand enterprise of Temperance Societies will be nearly accomplished. But when your committee are constrained to ask, will this be done, if the members of temperance societies unnecessarily pass by temperance houses and manifest a decided preference for the favorite haunts of the tippler and the gambler? A preference for temperance taverns, kept by respectable families and with decent accommodations, though less splendid and elegant than others, is surely not too great a sacrifice for temperance men to make for the advancement of a cause, designed to remove one of the greatest physical and moral evils which ever existed in our nation. And we cannot believe that when this subject shall be duly considered by the friends of this cause, that such a sacrifice, if it be indeed a sacrifice, will be reluctantly made. Still we consider it desirable that the keepers of temperance houses should render their establishments as comfortable and attractive as possible, by having them well furnished, and by bestowing on their patrons assiduous attention.

Good public houses constitute a large portion of the comfort and benefit of traveling. They are an ornament and an honor to the places where they are located. Public houses, in a great measure, give character to our cities, towns and villages, not only in the estimation of travellers, but by the influence they exert on the surrounding community.

In conclusion your committee observe, that while they warmly recommend the encouragement of temperance taverns, by a liberal patronage, whenever practicable, in preference to others, they consider it unreasonable to expect that such patronage will be given to the extent which is desirable till temperance houses shall, in accommodations, style and attendance vie with the best hotels in the country and in the city. To the advancement of the cause in this State, we deem it important that a spacious and well furnished Temperance Hotel, kept in the best manner by a family of high moral qualities and well calculated for the employment, should exist in every considerable village.

All which is respectfully submitted.

C. WRIGHT, for the committee.

The Report was accepted, and on motion unanimously adopted by the Society.

The following preamble and resolutions

introduced at a former meeting, were considered separately and adopted:

Whereas we believe that the traffic in ardent spirits is one of the principal sources of intemperance, and that intemperance is the chief occasion of crime:

And whereas the expense of the prosecution and punishment of crime is defrayed by the tax-paying community:

And whereas every man is morally responsible to God and to his fellow-men for the good he may do, as well as the evil he may prevent:

And whereas moral Truth, plainly yet kindly presented and brought to bear upon the public conscience, is the grand instrument by which errors of opinion and practice have ever been withstood, and vanquished:

Therefore,

1. Resolved, That the makers and sellers of ardent spirits are fairly chargeable with the guilt of being promoters of intemperance; and that all, who, by precept or example encourage their manufacture and sale, should be held accountable at the bar of public opinion as partakers in the sin of intemperance.

2. Resolved, That the traffic in ardent spirits is a flagrant trespass on the public welfare—a palpable outrage on the rights of the community, whose enormity is to be measured only by the mischiefs and miseries of which it is the parent.

3. Resolved, That the intimate connexion between intemperance and crime, as abundantly shown in the history of criminal jurisprudence, imposes a pecuniary burden upon the tax-payers who stand aloof from the traffic, as unequal and oppressive as it is unjust and indefensible.

4. Resolved, That considerations of political economy, equal justice, and the general welfare, unitedly call for a legislative prohibition of the traffic in ardent spirits, except for medicinal or manufacturing purposes.

5. Resolved, That the Legislature of Vermont, by occasional enactments, imposing partial restrictions upon the traffic for more than thirty years, have evinced, what the enactments themselves clearly imply, that there is no want of constitutional authority to extend the restrictions so far as to amount to a total prohibition.

6. Resolved, That the recent instances of tragical crime and premature death in our own neighborhood furnish melancholy proofs of the destructive tendency of the traffic, and admonish us to "very loud and spare not," showing the manufacturers their transgression and the sellers and buyers their sin.

7. Resolved, That while we disclaim any wish or intention to hold up to public censure any class of citizens in an unkind or invidious spirit, yet we feel bound to withstand with firmness and constancy any practice which was against domestic peace, and multiplies around us the elements of discord, poverty, wretchedness, crime and death.

8. Resolved, That the foregoing preamble and resolutions, together with the Report on Temperance Taverns, be offered for publication in the several newspapers of the village.

On motion, the Society adjourned to meet again on Friday evening, 6th of May.

C. L. KNAPP, President.

C. B. STEBBINS, Secretary.

LIBERTY OF THE PRESS.

From the National Intelligencer.

PROPOSED REPORT BY MR. HALL, OF VT.

On Invidious Publications.

Concluded.

The minority will now notice briefly, the fourth proposed mode of legislation—that of making it an offence against the United States for any person to send through the mail into slaveholding States any publications which, in the opinion of Congress, described in the act, would tend to instigate the slaves to insurrection.

It is obvious that this mode of legislation, though framed in its operation to the specific evil complained of in the message, is precisely the same in principle with those which include other publications than those on the subject of slavery. The same process of reasoning which would admit in Congress a power to determine what publications would have a tendency to instigate a servile insurrection, and to restrain their circulation, would allow the same body a power to determine what publications would tend to excite a political revolt, and draw after it the same power of proscription. The extensive provisions of the former proposed modes of legislation would, therefore, do no violence to the principles of this; but would merely serve as an illustration of those principles, by carrying them out to some of their alarming consequences.

The minority have not been able to come to the conclusion that Congress possesses the constitutional power to restrain the mail circulation of the publications specified in the message. On the contrary, they believe that any legislation for that purpose would come in direct conflict with the clause in the Constitution which prohibits Congress from making any law "abridging the freedom of speech, or of the press."

Having already seen that the effect of this restriction in the Constitution cannot be read, by any reference to State legislation, the direct argument on this question is brief. After stating the prohibitory clause of the Constitution, it only remains to show the exercise of a power by Congress to discriminate between the sentiments and opinions contained in different publications, and to prohibit the mail circulation of such as Congress chooses to consider of evil tendency, allowing to all others the benefit of a free circulation, would be an abridgment of the freedom of the press; a proposition which, it appears to the undersigned, needs only to be stated to meet with universal assent.

The meaning of the term abridge is not

qualified in the Constitution by the specification of any particular degree beyond which the liberty of the press is not permitted to be diminished. And the slightest construction or lessening of that liberty is forbidden. Nor does the Constitution point out any particular mode by which the freedom of the press may not be abridged. All modes of abridgment whatever are excluded, whether by the establishment of a censorship, the imposition of punishments, a tax on the promulgation of obnoxious opinions, or by any other means which can be devised to give a legislative preference, either in publication or circulation, to one sentiment emanating from the press, over that of another. Otherwise, the clause, by being susceptible of evasion, would be nugatory and useless. It was not against particular forms of legislation, but to secure the substance of the freedom of the press, that the clause was made a part of the Constitution. The object of publication is circulation. The mere power to print, without the liberty to circulate, would be utterly valueless. The Post Office power, which belongs to the General Government, is an exclusive power. Under that power Congress has the entire control of the whole regular circulation of the press. Neither a State nor individuals, in opposition to the will of Congress, can establish or carry on the business of such circulation. A power, therefore, in Congress to judge of the moral, religious, political, or physical tendency of publications, and to deny the medium of mail circulation to those it deemed of obnoxious character, would not only enable Congress to abridge the freedom of the press, but absolutely and completely to destroy it. Even under the practical operation of the present Post Office laws, (and they may be constitutionally amended until Congress shall exercise the most perfect monopoly of disseminating information,) the prohibition of the mail circulation of any publication for which such circulation was desired, would be one of the highest degrees of abridgment of the freedom of the press. No periodical in the country which was prohibited a mail circulation could compete with its antagonist publication to which that privilege was allowed, with the smallest hope of success.

Here the minority believe they might safely rest the argument against the constitutionality of the legislation suggested in the message of the President; but the importance of the subject, as well as a respect for those who have maintained a different opinion, seem to call for a still further examination.

The constitutionality of a law having for its object the suppression of "incendiary publications" is not sustained by any precedent which the history of our legislation affords. The session act of 1798 falls far short of being such a precedent. In regard to the session act two things are to be noticed: First, in order to constitute the offence, the publications must have been directed against the Government of the United States, its officers or authority; and, secondly, the publications must have been false, and the defendant must prove their truth in justification. In favor of the power of Congress to pass this act, it was urged "that a law to punish false, scandalous, and malicious writings against the Government of the United States, with intent to stir up sedition against that Government, was a law necessary and proper for carrying into effect the powers vested by the Constitution in the Government of the United States; that libels against that Government were offences arising under the Constitution, and consequently punishable before the Federal Courts." [See the report of a Committee of Congress on the alien and sedition acts, Feb. 21, 1799.] There is no pretence that the publications which Congress is now called upon to suppress are directed against the General Government, or have any tendency to endanger or disturb its authority. It is the State authorities which are alleged to be endangered by the "incendiary publications," and consequently a law to suppress them would be beyond the principle of the session act, and unsupported by the argument in favor of its constitutionality. Indeed the principle of the legislation now sought would, as far as their mail circulation was concerned, assert a jurisdiction in Congress over the whole subject of libels, whether against the Government or individuals; an extent of jurisdiction of which the framers of the session act could never have even dreamed. It was further urged in favor of the session act, that it was no violation of the article of the Constitution which prohibited Congress from making any law "abridging the freedom of the press," because it was said, the genuine freedom of the press consisted in the liberty to publish without restraint the truth, and that it could be no abridgment of that freedom to punish the publication of falsehood. In the legislation now in contemplation, the prohibitory clause of the Constitution is not even sought to be evaded, by allowing the truth to be given in evidence in justification of the publication. Whether true or false, the offence will be equally severe. The session act is, therefore, no precedent for any of the principles of the legislation which is required to suppress the circulation of "incendiary publications."

Those who denied the constitutionality of the session act, and among them Mr. Madison in his celebrated and able report, made to the Virginia House of Delegates in 1799, contended that the clause of the Constitution which provided that Congress shall make no law "abridging the freedom of speech, or of the press," was to be understood as a clear prohibition of all power in Congress over the subject of the press, and that consequently Congress could make no law in any manner affecting it. This doctrine is believed to have obtained the almost universal assent of the People of the United States, and especially of that portion of the People of the Union for whose peculiar benefit the proposed legislation is intended. In this doctrine the undersigned concur; and if it be admitted as the true doctrine, if it be admitted that Congress can make no law in any manner affecting the press, they cannot conceive what possible ground remains for argument, in favor of the constitutionality of the legislation now in contemplation.

But it is contended that Congress has authority to legislate for the suppression of the mail circulation of "incendiary publications," under the special power "to establish post offices and post roads," and the general power "to make all laws necessary and proper for carrying into execution" that power; and it is argued

that the suppression of the mail circulation of these publications would be a legitimate regulation of the Post Office Department; that the Post Office Department is to be considered as an instrument in the hands of the Government for beneficial purposes, and that Congress may well pass any law which shall prevent the use of that instrument for purposes of mischief.

It will be readily conceded that Congress, under the post office power, may make any law which is necessary and proper to secure the safe, convenient, and expeditious transportation of the mail. With this object in view, Congress may prescribe the weight, the bulk, and mechanical form of packages, and the nature of the material of which the article to be transported shall consist; and should the great object of the mail establishment, the safe and expeditious dissemination of information from one part of the country to another, ever require the sacrifice, Congress may prohibit the circulation of particular classes of publications, as pamphlets, magazines, and even newspapers. Nor will the undersigned undertake to say that Congress could not, under its post office power, prohibit the use of the mail for transportation of articles calculated to produce mischief or crime, in cases where its legislation would not come in conflict with any of the prohibitory clauses of the Constitution. The sending through the mail of forged papers, as checks, drafts, or bank bills, might present a strong case to the consideration of Congress, and it is not necessary, in the view which the undersigned take of the subject under examination, to inquire into the constitutionality of a law to meet cases of that description.

The minority hold that, in the execution of the powers conferred by the Constitution, Congress must confine itself to the legitimate object of those powers, and that Congress, under color of executing any particular power, cannot enter on ground on which it is forbidden to tread by the prohibitory clauses of the Constitution. They hold that the prohibitory clauses of the Constitution are co-extensive with the whole instrument; that they restrain, absolutely and completely, the conferred powers, and that they cannot, under any pretence, be violated without a violation of the Constitution. Congress cannot, for instance, however urgent the necessity may seem, "suspend the privilege of the writ of *habeas corpus*," but in cases of rebellion or invasion, or under any circumstances, "pass any bill of attainder or *ex post facto* law," or "grant any title of nobility," or "infringe upon the right of the people to keep and be arms," or direct "private property to be taken for public use without compensation," or "make any law respecting an establishment of religion or prohibiting the free exercise thereof." Nor can Congress, under color of the post office, or any other power, "make any law abridging the freedom of speech or of the press." Congress cannot do this, for the very plain and simple reason that the constitution no where says Congress may, but on the contrary expressly and positively says Congress shall not.

A question having some analogy to that under present examination, has been heretofore discussed with much ability by both Houses of Congress. It arose under this very post office power, and the legislation sought was denied, on the ground that it would infringe that prohibitory clause of the constitution which provides that "Congress shall make no law, respecting an establishment of religion, or prohibiting the free exercise thereof," a clause which is found in the same article with that relating to the freedom of the press, and to which, in its nature, it is very nearly allied. The minority refer to the adverse reports of the committees of the Senate and House, on the memorable petitions for the discontinuance of Sunday mails. It is to be observed that a law for discontinuing those mails could not be said to be strictly a law "respecting an establishment of religion," because no such establishment existed in the country, and the proposed law could not constitute such an establishment. Nor could it be alleged that such a law would actually "prohibit the free exercise of religion," for it was not pretended that any person did make, or could make it, a matter of conscience to be allowed to transport the mails, or to send or receive letters on Sunday. Nor could it be alleged against such a law that it would give any preference in privileges to the followers of one religion over those of another; for the law would be equal in its operation, affecting alike those of every faith. The principle on which those reports were founded could be no other than this; that the Government could not recognize the religious belief of a part of its citizens as the ground for legislation, that should deprive the whole of them of a privilege which they might otherwise enjoy. It was said by those committees that the convenience and usefulness of the mail establishment forbid the proposed change; and they argued with much force and eloquence, that a determination in favor of the prayer of the petitioners would involve Congress in a legislative decision of the religious controversy pending between those who hold to the divine obligation of the Sabbath and those who denied it; and making a point of religious belief the basis of legislation would violate the spirit of the Constitution, and be highly dangerous as a precedent. On this ground the prayer of those petitioners was denied, and the country has cheerfully responded to the propriety of the decision. It is obvious that the principle on which the legislation now contemplated rests, would be a much clearer infringement of the Constitution than that adjudicated by those committees.

If the petitions, before referred to, instead of asking for a discontinuance of Sunday mails, had alleged that publications impugning the divine obligations of the Sabbath were of immoral and dangerous tendency, and had prayed Congress to prohibit their mail circulation, there would have been

presented a question precisely in principle with that now before Congress. The favorable decision of such a question these committees might well have said, would not only "involve Congress in a legislative decision of a religious controversy," but by giving a preference in privileges to men of one religious faith, over those of another, would be a direct violation of that article of the constitution which secures to all "the free exercise of religion." And they might have added, such a decision would also give a preference to publications advocating one sentiment over those of another, it would be a like violation of the other clause of the same article, which prohibits Congress from making any law "abridging the freedom of the press." Supposing this change of question, the minority cannot doubt that the reports of those committees would have been as decidedly adverse, their argument as eloquent and convincing, and the judgment of the country no less uniform and conclusive.

The prohibition of "incendiary publications" from mail circulation is not within the legitimate scope of the post office power; the power of proscribing them not being at all necessary to the safe, convenient, or expeditious transportation of the mail; they can as well be conveyed as any other publications of the same form and size. A law to prevent their circulation would be founded in erroneous and unconstitutional principles. Under color of providing for the convenient transportation of the mail, and of preventing its use for evil purposes, it would assume a power in Congress to judge of the tendency of opinions emanating from the press; a power to discriminate between packages, not in reference to their bulk or form, but in relation to the sentiments they might be designed to inculcate. One class of opinions, meeting the approbation of Congress, is permitted a free circulation; another class of opinions, which Congress denounces as "dangerous, seditious, and incendiary" is prohibited. This is one of the very cases in which the prohibition in the constitution was designed to operate. The framers of this article of amendment never could have had any apprehension that Congress would undertake to restrain all publications. History has furnished no such lesson. No government, however despotic or tyrannical, ever desired to exercise such a power. Even in the Ottoman Empire, a man might always have written a panegyric of the reigning Sultan, or of his favorite institutions, without incurring the slightest danger of the law. The safe, the peaceful, the loyal publications were never anywhere proscribed. It is only on the dangerous, the seditious, the incendiary, that the iron grasp of government is ever laid. All the decrees and edicts which in any country, have ever been issued to trammel the productions of the pen, from the bull of Leo, down to the ordinance of Charles the Tenth, for sealing up in a public depot the printing press of France, hold one uniform language. They are all promulgated to prevent the perils of insurrection, and all directed against dangerous, seditious and incendiary publications. If it is said that the publications which we are now called upon to suppress are really and truly dangerous, seditious and incendiary, then the minority say they are really and truly some of the precise publications against which it was designed by the Constitution that Congress should have no power to legislate. The people of the United States never intended that the government of the Union should exercise over the press the power of discriminating between true and erroneous opinions, of determining that this sentiment was patriotic, that seditious and incendiary, and therefore wisely prohibited Congress all power over the subject.

The minority of the committee respectfully submit to the House that Congress does not possess the constitutional power to distinguish from other publications, of like size and form, the "incendiary publications" specified in the message of the President, or in any way to restrain their separate mail circulation.

HILAND HALL,
GEORGE N. BRIGGS.

From the Boston Atlas.

TEXAS AND THE AFRICAN SLAVE TRADE.

When it was asserted, some time ago, that the slave trade to the coast of Africa was carried on from New York, the assertion was met, on the part of several papers, in that city, with an indignant and contemptuous denial. Not long after it came out that a fast sailing news-boat, lately belonging to the Journal of Commerce, was turned into a slave; and as the fact of New York slave trading could be outcried no longer, the District Attorney began to stir in the matter.

But the fitting out two or three, or a dozen slave ships, is a small affair compared with the scale upon which some capitalists of that city and New Orleans, are preparing to carry on the traffic.

It is well known, that by certain hocus-porous operations, the greater part of the soil and territory of the free and independent state of Texas is owned, or pretended to be owned, by certain land companies and speculators in New Orleans and New York. If the fathers and guardians of this new-born state would be content to let it be peopled by freemen, they would find emigrants enough in the poorer class of white people, whom the pressure of a slave population is continually expelling from the cotton-growing States of the American Union, — and whose industry, transplanted to a more generous soil, and removed from the baneful influences by which it is now blasted, would gradually build up a free, happy, industrious and prosperous community.

But such views are undreamt of in the philosophy of land speculators. They are in a hurry to be rich; they want to sell the land at high prices. The poor emigrants, who in the end, might build up a great State, in the beginning, have little money to buy with. Those who are able to pay great prices have no idea of cultivating cotton with their own hands. They must have slaves to work for them; and if slaves can be had from Africa for a hundred dollars a head, and they can be set to work on the fertile soil of Texas, it is supposed that the returns upon capital will be so great, as to out-rival Mississippi and Alabama, and turn the stream of emigration into this new land of promise.

This is the grand scheme, of which the Texian rebellion, and Texian independence are to be the instruments. Under the attractive banner of "liberty," and with the popular war-cry "down with the despots and the priests," the young men of the United States are to contribute their persons, and the young ladies are to be called upon to throw in their purses, towards a crusade in behalf of the African slave trade!

The slave trade to Africa, though still extensively carried on, is prohibited by the laws of every European, and every American State. It is all illegal traffic, which nobody in any civilized community, dares openly to countenance. This cotton-traffic is to be taken under the exclusive protection of Texas; and should the scheme succeed, and Texian flag will wave at the mast head of a hundred slave ships. These ships will be built, equipped, and manned, as the Texian privateers now are in New Orleans, New York, Boston; and no doubt, a certain portion of the cargoes, at least enough to pay for the vessels and their equipments, will find a way into the United States, across the Red River and the Louisiana frontier.

In the mean time, the "free and independent" Texans are content to carry on the trade on a more limited scale. Slaves are constantly arriving at the Havana, and we state upon the best authority, that a gentleman of Texas, the brother of one high in office under the Federal government, is, or not long ago, was in the United States, for the purpose of procuring American vessels to proceed to Havana, and there to take in cargoes of slaves for the Texian market. When it was suggested to this gentleman, that this would be engaging in the slave trade, and that by our laws the slave trade was piracy, the Texian stopped the objector's mouth, by referring to a late decision by a learned judge of the Supreme Court of the United States, that to take slaves as passengers, (and this was all he wanted of the ship-owners) from Havana to Texas, would fall under the same rule. This same gentleman assured our informant that the two or three thousand African slaves now in Texas, seemed to be very happy and contented—they only complained a little, at being separated from their wives and children. This is a misery which the philanthropy of Texas, no doubt, will speedily alleviate. The importation of a cargo or two of African women, will supply this pressing want; gratify the humanity of the Texans; and put a pretty penny into the pockets of the importers.

It has been boldly asserted, by people who pretended to know, that General Jackson and his particular friends and intimates at Washington, have been speculating largely in Texas lands. Take this in connection with the wanton and criminal negligence of the government in preserving our neutrality—the open enlistment of volunteers, and the equipment of vessels in the United States for the benefit of the Texans, and if true, it fixes a deep stain on the character of General Jackson and his administration.

We do not believe it is true. No doubt it is one of the thousand and one falsehoods invented and circulated to keep up the price of the Texian scrip; and we mention it here, to give those, who have the power, an opportunity of giving an authoritative contradiction to a report, so injurious to General Jackson himself, and to the character of the government of which he is the head.

SOUND DOCTRINE.

Rev. C. G. Finney, in a recent discourse, remarked:

"The individual who will enslave his fellow men for his own selfish objects, would enslave others, any or all, if his interest demanded, and if he had the same opportunity."

If a man will appropriate the rights of one, he would appropriate the rights of all men, if he could do it with impunity.—The individual who will deprive a black man of his liberty, and enslave him, would make no scruple to enslave a white man, if circumstances were equally favorable.

"The man who contends that the black laborer of the south ought to be held in slavery, if he dared, would contend to have the white laborers of the north enslaved, and would urge the same kind of arguments, that the peace and order of society requires it, and laborers are so much better off when they have a master to take care of them. The famous Bible argument, too, is as good in favor of white slaves as black, if you only had the power to carry it out. The man who holds his fellow man as property, if he could with impunity. The principle is the same in all. It is not principle that keeps men who hold slaves from kidnapping on the coast of Africa, or from making war to enslave the free laborers of the north."